Sprint

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*Via Electronic Mail Delivery*

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**Re: Technology-Specific Overlays**
***Numbering Resource Optimization* – CC Docket No. 99-200**
***Written Ex Parte* Presentation**

Dear Ms. Attwood and Mr. Sugrue:

It appears that growing attention is being given to the subject of technology-specific overlays ("TSOs"). Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), submits this written *ex parte* presentation to urge the Commission to reject TSOs for a third time, and to reaffirm that TSOs would be unlawful under the Communications Act. TSOs would undermine rather than promote number optimization. They would also be discriminatory and anticompetitive.

## I. Technology-Specific Overlays Would Undermine Rather Than Promote Number Optimization

TSOs are not a number conservation measure because they would not enable any carrier to use its numbers more efficiently. TSOs, like any form of area code relief, simply provide a new inventory of numbers. The difference between a TSO and an all-services overlay is that a TSO would be established when the existing NPA is underutilized, and TSOs would thus involve the activation of a new NPA when implementation of a relief NPA could not otherwise be justified. The proliferation of TSOs would cause more NPAs to be activated, thereby reducing the remaining supply of unused NPAs. In short, TSOs would contribute to the accelerated exhaust of the North American Numbering Plan ("NANP") – the very reason industry and regulators have focused on number conservation.

TSOs can never be more efficient than all-services overlays, because carrier numbering needs would be satisfied through two NPAs rather than one NPA. As the NANPA Director has explained, TSOs "will almost certainly lead to waste of valuable

numbering resources."[1] The Texas Commission has similarly recognized that TSOs would "lead to the stranding of numbers in certain rate centers."[2]

"Implementing new area codes," the FCC has correctly noted, is "not a solution" to our numbering crisis.[3] To the contrary, implementing new NPAs would exacerbate the problem because the premature activation of new area codes will necessarily result the premature exhaust of the NANP. Estimates are that expanding the NANP could cost between $50 and $150 billion, and numbering optimization efforts seek to avoid this enormous cost.[4]

TSOs are especially unwarranted now that wireless carriers are poised to participate in number pooling. For example, CLECs are currently using only 10.5% of all numbers assigned to them.[5] The FCC has noted that if LECs implemented pooling in all top 100 MSAs, "nearly 180,000 blocks of telephone numbers could be made available to carriers in immediate need of numbering resources," with CMRS pooling adding another 24,000 blocks to the pool.[6] Growth in total landline customers has been modest in recent years, while growth in wireless services remains strong.[7] Accordingly, if the goal is to preserve the life of our numbering plan, it makes no sense to establish TSOs and deplete the remaining supply of available NPAs when so many number blocks in existing NPAs remain unused.

In sum, because TSOs do not provide any number conservation benefits, it will not "promote numbering resource optimization objectives."[8]

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[1] Letter from Ronald R. Conners, Director, North American Numbering Plan Administration, to Geraldine A. Matise, Chief, Network Services Division, Common Carrier Bureau (March 21, 1996).

[2] Texas Comments at 8 (Feb. 12, 2001).

[3] *Numbering Optimization NPRM,* 14 FCC Rcd 10322, 10325 ¶ 5 (1999).

[4] *Id.* at 10326 n.8.

[5] *See* FCC News, *FCC Releases Numbering Resource Utilization Report* (June 13, 2001). In contrast, even without participating in number pooling, CMRS carriers are using 50.7% of their numbers. *Id.* at 2.

[6] *Id.* at 2.

[7] Total LEC customers grew by 3.7% and 6.5% during 1998 and 1999, respectively. *See Trends in Telephone Service*, Table 8.4 (Aug. 2001). In contrast, last year alone, the total number of CMRS customers grew by 28.4%. *See Sixth Annual CMRS Report,* 16 FCC Rcd at 13355. If these growth patterns continue, the number of mobile customers will soon exceed the number of LEC residential customers.

[8] *See Further NRO NPRM,* 16 FCC Rcd 306, 360 ¶ 126 (2000).

## II. TSOs Would Undermine the Congressional Policy of Dialing Parity

Congress has determined that competition in the telecommunications market will be enhanced only if there is dialing parity.[9] In this regard, FCC rules provide that a LEC "shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local call notwithstanding the identity of the customer's or the called party's telecommunications service provider."[10] The real reason that certain parties support TSOs is such NPAs would preserve seven-digit dialing in existing area codes. Customers that are assigned numbers from the TSO area code (presumably wireless customers) would be required to dial 10 digits to reach LEC customers in the incumbent area code and LEC customers would dial 10 digits to reach a customer in the TSO area code. TSOs would thus undermine the Congressional policy embodied in the dialing parity statute, because local land-to-mobile calls would be dialed with 10 digits, while local land-to-land calls in certain cases would be dialed using only seven digits.

## III. The FCC Has Repeatedly Held That Technology-Specific Overlays Would Be Discriminatory and Unlawful Under the Communications Act

The FCC has repeatedly ruled that TSOs are unlawful under the Communications Act: "any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition."[11] While the FCC has flexibility to change its position on issues, it must, of course, explain the reason for its departure from such precedent.[12]

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[9] *See* 47 U.S.C. § 251(b)(3).

[10] 47 C.F.R. § 51.207. The FCC has expressly ruled that a LEC's obligation to provide dialing parity extends to CMRS providers. *See Second Local Competition Order,* 11 FCC Rcd 19392, 19429 ¶ 68 (1996).

[11] *Second Local Competition Order,* 11 FCC Rcd at 19518 ¶ 285, 19527-28 ¶ 305. *See also Ameritech Numbering Order,* 10 FCC Rcd 4596 (1995); *Numbering Optimization NPRM,* 14 FCC Rcd 10332, 10431 ¶ 257 (1999)("We continue to believe that service-specific or technology-specific overlays raise serious competitive issues."); *Second NRO Order,* 16 FCC Rcd 306, 362 ¶ 129 (2000)("We . . . remain concerned about the potential competitive and efficiency implements of service and technology-specific overlays."); *Third Local Competition Reconsideration Order,* 14 FCC Rcd 17964, 18010 ¶ 68 (1999)("[O]ur goal is to have technology-blind area code relief that does not burden or favor a particular technology.").

[12] *Channel 41* v. *FCC,* 79 F.3d 1187, 1191 (D.C. Cir. 1996). *See also Wisconsin Valley Improvements* v. *FERC,* 236 F.3d 738, 747 (D.C. Cir. 2001)("[A]n agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reasons for doing do. Indeed, where an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious."); *AT&T* v. *FCC,* 236 F.3d 729 (D.C. Cir. 2001); *AT&T* v. *FCC,* 974 F.2d 1351 (D.C. Cir. 1992).

The FCC determined in 1995 and 1996 that TSOs were unlawful, and there would be no basis for it to rule that such overlays could be lawful today.[13] The LEC-CMRS competition that the FCC hoped for in the mid-1990s has now become a reality,[14] and segregating wireless customers from landline customers would only undermine the inter-sector competition that the Commission has successfully fostered. Again, requiring LEC customers to dial 10 digits for land-to-mobile calls when they need dial only seven digits for land-to-land calls will not facilitate LEC-CMRS competition.

The "take back" of numbers (wireless customers would be required to return their numbers so they could potentially be reassigned to LEC customers) would also be discriminatory. The FCC has repeatedly ruled in the past that such "take backs" are unlawful and would place wireless customers at a "distinct disadvantage."[15] Indeed, states addressing the issue recognize that "take backs" would have "an adverse impact on competition" and would "create a disparate impact on customers of the services affected by the 'take-back.'"[16]

## IV. There Is No Basis That the Commission Could Delegate TSO Authority to the States

Congress has established the FCC as "guardian of the nationwide NANP resource," by vesting with it "exclusive jurisdiction" over numbering issues that pertain to

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[13] The FCC has suggested that a reexamination of the TSO prohibition may be warranted because of "changes in the use of numbering resources that have occurred since the Commission's previous decisions." *Further NRO NPRM,* 16 FCC Rcd at 361 ¶ 128. However, carrier "use" of numbers has not changed in any way. Nor will TSOs "ease the transition to needed area code relief" (*id.*), because TSOs are themselves would be a form of area code relief.

[14] Indeed, a growing number of consumers are using wireless as their only phone. *See Sixth CMRS Competition Report,* 16 FCC Rcd 13350, 13382-84 (2001). *See also* THE WALL STREET JOURNAL, *Callers Cut Off Second Phone Lines for Cellphones and Cable Modems* (Nov. 15, 2001)

[15] *Ameritech Order,* 10 FCC Rcd at 4608 ¶ 27. Mobile customers would be placed at a disadvantage because they would "suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new number." *Id. See also Second Local Competition Order,* 11 FCC Rcd at 19527-28; *NRO Further NPRM,* 16 FCC Rcd at 363 ¶ 134.

[16] Illinois Comments at 9 (Feb. 14, 2001). *See also* Connecticut Comments at 7-8 Feb. 14, 2001)("Clearly, , the public interest is not served if consumers would be required to 'turn back' their existing telephone numbers and undergo the unnecessary expense and inconvenience often associated with changing telephone numbers."); Ohio Comments at 9 (Feb. 12, 2001)(Take backs would "impose a hardship on consumers and could create a negative, competitive effect on the technology-specific industry, such as wireless carriers.").

the United States.[17] The Commission has adopted a "national numbering resource optimization strategy" because "the rapid depletion of numbering resources" is a "national problem that must be dealt with at the federal level."[18]

To be sure, the FCC may delegate some of its numbering authority to the states, and it has delegated certain authority to the states.[19] However, the FCC has delegated its numbering authority only "subject to Commission and industry guidelines for numbering administration":

> [I]f the Commission delegates to the states or other entities any portion of its authority over telecommunications numbering, those state or entities must perform their delegated functions in a manner consistent with certain guidelines. . . . These guidelines are intended to ensure the fair and timely availability of numbering resources to all telecommunications carriers.[20]

Given that TSOs undermine number optimization and are anti-competitive and discriminatory, there is no set of circumstances where the Commission could authorize a state to implement a TSO – because any TSO that a state might adopt would undermine that national numbering optimization plan that the FCC has implemented.

It would be especially inappropriate to permit states to adopt TSOs involving wireless carriers. State regulators may adopt a TSO not for the benefit of mobile customers, but to temporarily delay having to adopt area code relief for LEC customers. A TSO that a state may adopt may be based on prolonging the lives of existing NPAs for LEC customers rather than developing a TSO that matches mobile customer calling patterns. Especially given the Congressional directive that the FCC "establish a Federal regulatory framework to govern the offering of all commercial mobile services,"[21] states should not be permitted to establish TSOs involving wireless carriers.

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To confirm, the Commission should reject arguments to permit states to adopt technology-specific overlays. Such overlays are anti-competitive and would undermine LEC-CMRS competition. In addition, TSOs would undermine the Commission's number optimization efforts.

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[17] *See* 47 U.S.C. § 251(e)(1). *See also New* York v. *FCC,* 267 F.3d 91 (2d Cir. 2001)(affirming FCC's exclusive jurisdiction over numbering); *First NRO Order*, 15 FCC Rcd 7475, 7580-81 ¶ 7 (2000); *NRO NPRM,* 14 FCC Rcd 10322, 10329 ¶ 16 (1999).

[18] *First NRO Order*, 15 FCC Rcd at 7578 ¶ 3 and 7580-81 ¶ 7.

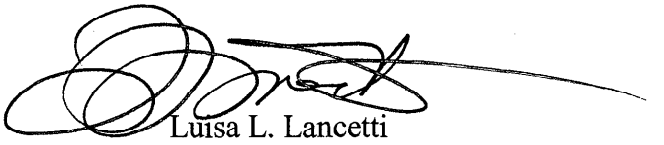
[19] The FCC is under no obligation to delegate any numbering authority to the states. *See New York* v. *FCC,* 267 F.3d at 107.

[20] *NRO NPRM,* 14 FCC Rcd at 10330 ¶¶ 17 and 19.

[21] H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 490 (1993).

Pursuant to Section 1.1206 of the Commission's Rules, an original and four copies of this *ex parte* presentation are submitted. Please associate this written *ex parte* presentation with the file in the above-captioned proceeding. Please contact us if you have questions concerning the foregoing.

Sincerely,



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